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IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN MARIANA ISLANDS

RANDALL T. FENNELL,

Plaintiff,

v.

MATTHEW T. GREGORY, ET. AL.,

Defendants.

CIVIL CASE NO. CV 09-0019

**EX PARTE MOTION FOR AN ORDER
SHORTENING TIME OF HEARING
DATE ON THE BANK OF SAIPAN'S
(1) MOTION TO INTERVENE AND
(2) MOTION TO DISMISS, OR IN
THE ALTERNATIVE, TO STAY
PURSUANT TO LOCAL RULE
7.1.h.3(b)**

CERTIFICATE OF COUNSEL PURSUANT TO LOCAL RULE 7.1.h.3(b)

1. Pursuant to Local Rule 7.1.h.3(b), the undersigned counsel for the Bank of Saipan ("Bank") hereby submits the following information on the parties counsels of record:

Mark B. Hansen, Esq.

Attorney for Plaintiff Randall T. Fennell
Second Floor, Macaranas Building
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Saipan, MP 96950
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Braddock J. Huesman, Esq.

Attorney for Defendants
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1 2. The Bank is making this *ex parte* request to shorten time in order to have its
2 Motion to Intervene with its Proposed Motion to Dismiss, or Alternatively, to Stay heard at the
3 same time as Defendants' Motion to Dismiss, scheduled for hearing in the above entitled action
4 on September 10, 2009 at 9:00 a.m. The basis for the Bank's Motion to Intervene is that the
5 issues raised in Fennell's Complaint are currently pending before the CNMI Superior Court in a
6 suit filed by the Bank entitled *Bank of Saipan v. Fennell, et al.*, C.A. 04-0449 and/or are
7 foreclosed by CNMI Supreme Court decisions arising from the receivership of the Bank.

8 3. In addition, the Bank provides with its intervention and dismissal motion,
9 independent grounds for dismissal under two recent United States Supreme Court cases, *Bell*
10 *Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), and recently in *Ashcroft v. Iqbal*, ___ U.S. ___,
11 129 S.Ct. 1937 (2009). The Bank provides judicially noticeable facts and decisions as the basis
12 for this argument, which are not advanced by the Defendants in this action. In the alternative, if
13 its motion to intervene is granted and this Court declines to dismiss Mr. Fennell's Complaint, the
14 Bank requests a stay of this action pending resolution of the parallel CNMI Superior Court
15 proceedings in *Bank of Saipan v. Fennell, et al.*, C.A. 04-0449. In order to request such relief in
16 a manner that promotes both judicial economy and the Bank's interest in having its nearly five
17 year old suit against Mr. Fennell resolved first, the Bank is requesting that its' Motion to
18 Intervene and Proposed Motion to Dismiss or Stay to be heard on shortened time at the
19 scheduled September 10, 2009 hearing.

20 4. The Bank's counsel is informed that Mr. Fennell's counsel opposes this request
21 for an order shortening time and intends to oppose the Bank's motion for intervention. As of this
22 filing, the Bank's counsel has not yet been able to reach Mr. Heusman, counsel for Defendants,
23 but has left a message at his office of the Bank's request.

24 5. The Bank respectfully requests that this Court either (i) grant this *ex parte* request
25 and schedule its Motion to Intervene and Proposed Motion to Dismiss or Stay (to be heard only
26 if its Motion to Intervene is granted) on September 10, 2009 at 9:00 a.m. with whatever briefing
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1 schedule the Court believes is appropriate or (ii) hear this request for an Order Shortening Time
2 on Tuesday, September 1, 2009, in order to work out an appropriate schedule for all parties.

3 6. This ex parte motion and accompanying documents, including its motions to
4 intervene and to dismiss or stay are being served upon all counsels of record in this case.

5 Respectfully submitted this 28th day of August, 2009.

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7 **LAW OFFICE OF WILLIAM FITZGERALD**
8 **Calvo & Clark, LLP**
9 Counsel for Defendant-Intervenors
10 *The Bank of Saipan, Inc.*

11 By: /s/
12 William M. Fitzgerald
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